

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

NELSON VELASQUEZ and
MYRIAM VELASQUEZ

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Plaintiffs,

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VS.

CASE NO. 5-19-CV-895

**TONY WALTERS and
SUPERIOR LIGHTING, LLC**

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Defendants.

JURY DEMANDED

DEFENDANT SUPERIOR LIGHTING, LLC'S NOTICE OF REMOVAL

Defendant **SUPERIOR LIGHTING, LLC** (hereinafter “Removing Defendant”), hereby gives notice of the removal of this action, pursuant to 28 U.S.C. § 1446, to the United States District Court for the Western District of Texas, San Antonio Division. As grounds for removal, Removing Defendant states as follows:

I. INTRODUCTION

1.1 On or about December 17, 2018, it is alleged that Plaintiffs were traveling on 5600 FM 1346 when they were struck on the driver side by the Defendant. At the time of the collision, Tony Walters was in the course and scope of his employment with Defendant Superior Lighting, LLC. As a result of the collision, the investigating officer with the San Antonio Police Department investigated the accident and found that failure to control his speed and driver inattention on the part of Tony Walters were contributing factors to this accident. *See Plaintiffs' Original Petition, Ex. B.*

1.2 On or about June 19, 2019, Plaintiffs filed their Original Petition in the 285th Judicial District Court of Bexar County, Texas, Cause No. 2019CI12260, alleging negligence and

gross negligence claims against Defendants Tony Walters and Superior Lighting, LLC. *See id.*

1.3 Removing Defendant was arguably first served with notice when Plaintiffs' counsel provided Defendant's insurance carrier with a copy of Plaintiffs' Original on or about June 27, 2019.

1.4 Removing Defendant files this notice of removal within the 30-day time-period required by 28 U.S.C. §1446(b), after having received information sufficient to determine that the case was removable and being served with the Plaintiffs' Original Petition.

1.5 Plaintiffs are individuals residing in Bexar County, Texas.

1.6 Removing Defendant Superior Lighting, LLC is a foreign Limited Liability Company with its principal place of business located at 51 Mossy Creek Drive, Ft. Valley, Georgia 31030.

1.7 Removing Defendant Tony Walters is an individual residing in Carroll County, Georgia.

1.8 Defendants are not "citizens" of the State of Texas and do not have a principal place of business in the State of Texas.

1.9 As set forth below, diversity jurisdiction exists and Removing Defendant hereby timely removes this matter to Federal Court.

II. PROCEDURAL REQUIREMENTS FOR REMOVAL

2.1 This suit may be properly removed to this Court under 28 U.S.C. § 1441(a) because this suit was pending in a state court located within the judicial district of the United States District Court for the Western District of Texas, San Antonio Division.

2.2 Defendant Superior Lighting, LLC has arguably received notice of Plaintiffs' Original Petition. Defendant Superior Lighting, LLC consents to the removal of this matter to Federal Court as evidenced by its counsel's signatures to this pleading.

2.3 Defendant Tony Walters has not yet been served with Plaintiffs' Original Petition. Thus, his consent to removal is not necessary and not applicable. *Balazik v. County of Dauphin*, 44 F.3d 209, 213 (3d Cir. 1995); *see U.S.C. § 1446(a)*.

2.4 As required by 28 U.S.C. § 1446(d), Removing Defendant is serving this Notice of Removal on all parties and will promptly file this Notice of Removal with the clerk of the 285th District Court of Bexar County, Texas.

2.5 All pleadings, process, orders and other filings in the state court action are attached to this notice as required by 28 U.S.C. § 1446(a). *See Ex. B.*

III. BASIS FOR REMOVAL

3.1 Removal is proper because there is complete diversity between the parties. 28 U.S.C. § 1332(a); *Darden v. Ford Consumer Fin. Co.*, 200 F.3d 753, 755 (11th Cir. 2000). Plaintiffs are individuals who are citizens of the State of Texas, and who reside in Bexar County, Texas. Removing Defendant is a foreign Limited Liability Company with its principal place of business in Georgia.

3.2 Removing Defendant is not a "citizen" of the State of Texas and does not have a principal place of business in the State of Texas.

3.3 In their Original Petition, Plaintiffs state they "seek monetary relief OVER ONE MILLION AND 00/100 (\$1,000,000.00)," which exceeds the federal jurisdictional amount in order to meet removal to federal court. When plaintiff's monetary demand is stated in the complaint, defendant can rely on that allegation to meet the jurisdictional requirement. *See S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 492 (5th Cir.1996).

3.4 All pleadings, orders and other filings in this state court action are attached to this notice as required by 28 U.S.C. §1446(a) and Local Rule 81. *See Ex. B.* Additionally, Removing

Defendant has filed herewith a list of all counsel of record, including the addresses, telephone numbers and the parties represented. *See Ex. C.*

3.5 Venue is proper in this district for removal under 28 U.S.C. §1441(a) because the state court where the action has been pending is located in this district.

3.6 Removing Defendant will promptly file a copy of this notice of removal with the clerk of the state court where the action has been pending.

IV. JURY DEMAND

4.1 Removing Defendant hereby makes this Demand for a Jury trial.

V. PRAYER

5.1 For the foregoing reasons, Defendant **SUPERIOR LIGHTING, LLC** removes the action to this Federal Court and request this case be placed on the docket of the United States District Court for the Western District of Texas, San Antonio Division.

Respectfully submitted,



BY:

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**ATTORNEYS FOR DEFENDANT
SUPERIOR LIGHTING, LLC**

CERTIFICATE OF SERVICE

I do hereby certify that on the 26th day of July, 2019, we electronically filed **Defendant's Notice of Removal** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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